

## **REMARKS**

Claims 1-6, 8 and 10-11 are pending in the captioned application.

In the outstanding Official Action, claims 1-6, 8 and 10-11 are subjected to a restriction requirement.

### ***I. Restriction Requirement***

The Examiner has required restriction of claims 1-6, 8 and 10-11 to one of the following inventions under 35 U.S.C. §121 and 372:

Group I: Claims 1-6 and 8, drawn to compounds and pharmaceutical compositions of formula I.

Group II: Claim 10 and 11, drawn to method of treating using these compounds.

Applicants hereby provisionally elect ***claims 1-6 and 8 of Group I***. Applicants' election is made with traverse.

Applicants reserve the right to file a divisional application directed to the non-elected subject matter.

### ***II. Traversal***

Applicants respectfully traverse the Examiner's restriction requirement for the following reasons.

Applicants respectfully traverse this restriction/election requirement because at the very least, Groups I-II, which the Examiner alleges have no unity of invention, share a **special technical feature** under PCT Rule 13.2, and thus, all of the presently pending claims possess unity of invention. Accordingly, restriction is improper.

PCT Rule 13.2 states the following, in relevant part:

"[T]he requirement of unity of invention referred to in Rule 13.1 shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression 'special technical features' shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art."

In the present application, the special technical feature that is shared between Groups I-II are the claimed compounds and pharmaceutical compositions comprising one or more compounds of the formula I. Applicant asserts that all of the recited features of the compounds of formula I are novel and unobvious over the prior art as a whole. Further, the special technical feature, i.e., the claimed compounds and pharmaceutical compositions comprising one or more compounds of the formula I links groups I-II. Thus, the restriction requirement should be reconsidered.

In view of the foregoing, Applicants respectfully submit that the claims of Groups I-II possess "unity of invention" because they share a special technical feature as required by PCT Rule 13.2. Thus, restriction of the claims of Groups I-II is improper. Accordingly, the Examiner is respectfully requested to reconsider and withdraw the restriction requirement of the claims of Groups I-II.

Applicant further submits that the claims of all of Groups I-II should be examined together because, in addition to being improper on the basis of unity of invention, the restriction requirement is further traversed because it omits "an appropriate explanation" as to the existence of a "serious burden" if a restriction were not required between the claims. See MPEP § 803. A complete and thorough search for the inventions set forth in the Official Action would be coextensive. Thus, it would not be a **serious** burden upon the Examiner to examine all of the claims in this application.

Furthermore, Applicant has paid a filing fee for an examination of all the claims in

this application. If the Examiner refuses to examine the claims paid for when filing this application and persists in requiring applicants to file divisional applications for each of the groups of claims, the Examiner would essentially be forcing Applicant to pay duplicative fees for the non-elected or withdrawn claims, inasmuch as the original filing fees for the claims (which would be later prosecuted in divisional applications) are not refundable.

**CONCLUSION**

Having made the required election, examination on the merits is earnestly solicited. Should the Examiner deem that any further action by Applicants' undersigned representative is desirable and/or necessary, the Examiner is invited to telephone the undersigned at the number set forth below.

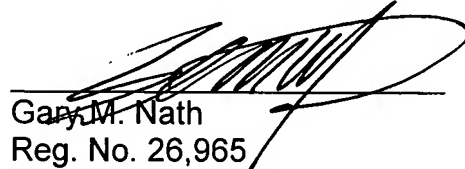
In the event this paper is not timely filed, Applicants petition for an appropriate extension of time. Please charge any fee deficiency or credit any overpayment to Deposit Account No. 14-0112.

Respectfully submitted,

**THE NATH LAW GROUP**

Date: March 9, 2009  
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